

§ 16.8

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employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures under chapter 75 of title 5, United States Code and 5 CFR part 752, penalties under the False Claims Act, sections 3729–3731 of title 31, United States Code or other applicable statutory authority, or criminal penalties under section 286, 287, 1001 and 1002 of title 18, United States Code or any other applicable statutory authority;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

[56 FR 51830, Oct. 16, 1991, as amended at 67 FR 57508, Sept. 11, 2002]

§ 16.8 Information collection requirements: OMB approval.

This part contains no information collection requirements, and, therefore, is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

[67 FR 57508, Sept. 11, 2002]

§ 16.9 Hearing.

(a) *Request for hearing.* (1) An employee shall file a petition for a hearing in accordance with the instructions outlined in the creditor agency's notice of offset.

(2) If the NRC is the creditor agency, a hearing may be requested by filing a written petition stating why the employee disputes the existence or amount of the debt or the repayment schedule if it was not established by written agreement between the employee and the NRC. The employee shall sign the petition and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, which the employee believes support his or her position. The

petition for a hearing must be received no later than fifteen (15) calendar days after receipt of the notice of offset unless the employee can show that the delay in meeting the deadline date was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(b) *Hearing procedures.* (1) The hearing will be presided over by a hearing official arranged by NRC (an administrative law judge or, alternatively, a hearing official not under the supervision or control of the head of the agency.)

(2) The hearing must conform to procedures contained in the revised FCCS, 31 CFR Chapter IX, 901.3(e). The burden is on the employee to demonstrate either that the existence or the amount of the debt is in error or that the terms of the repayment schedule would result in undue financial hardship or would be against equity and good conscience.

(3) An employee is entitled to representation of his or her choice at any stage of the proceeding. NRC attorneys may not be provided as representatives for the debtor. The NRC will not compensate the debtor for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

[56 FR 51830, Oct. 16, 1991, as amended at 67 FR 57508, Sept. 11, 2002]

§ 16.11 Written decision.

(a) The hearing official will issue a written opinion no later than 60 days after the hearing.

(b) The written opinion must include:

(1) A statement of the facts presented to demonstrate the nature and origin of the alleged debt;

(2) The hearing official's analysis, findings, and conclusions;

(3) The amount and validity of the debt; and

(4) The repayment schedule, where appropriate.

§ 16.13 Procedures for centralized administrative offset.

(a) The NRC must notify Treasury of all debts that are delinquent as defined in the FCCS (over 180 days old) so that recovery may be made by centralized administrative offset. This includes those debts the NRC seeks to recover

from the pay account of an employee of another agency via salary offset. The Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against such debts. When a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt. Prior to offset of the pay account of an employee, the NRC must comply with the requirements of 5 U.S.C. 5514, 5 CFR part 550, and 10 CFR part 15. Procedures for notifying Treasury of a debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and 10 CFR 15.33. Procedures for internal salary offset are contained in § 16.15 of this chapter.

(b) When the NRC determines that an employee of another Federal agency owes a delinquent debt to the NRC, the NRC will, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Provide the Federal employee with a notice and an opportunity to dispute the debt as contained in 5 U.S.C. 5514 and 10 CFR 15.26.

(3) Submit the debt to Treasury for centralized administrative offset and certify in writing that the debtor has been afforded the legally required due process notification.

(4) If collection must be made in installments, the NRC must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment.

(c) *Offset amount.* (1) The amount offset from a salary payment under this section shall be the lesser of:

(i) The amount of the debt, including any interest, penalties, and administrative costs; or

(ii) An amount up to 15 percent of the debtor's disposable pay.

(2) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the NRC.

(3) Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of the NRC.

(d) *Priorities.* (1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.

(2) When a salary payment may be reduced to collect more than one debt, amounts offset under this section will be applied to a debt only after amounts offset have been applied to satisfy past due child support debt assigned to a State pursuant 26 U.S.C. 6402(c) and 31 CFR 285.7(h)(2).

(e) *Notice.* (1) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing of the date that deductions from salary will commence and of the amount of such deductions.

(2)(i) When an offset occurs under this section, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing that an offset has occurred including:

(A) A description of the payment and the amount of the offset taken;

(B) Identification of NRC as the agency requesting the offset; and,

(C) A contact point within the NRC that will handle concerns regarding the offset.

(ii) The information described in paragraphs (e)(2)(i)(B) and (e)(2)(i)(C) of this section does not need to be provided to the Federal employee when the offset occurs if such information was included in a prior notice from the disbursing official or paying agency.

(3) The disbursing official will advise the NRC of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor. The disbursing official will not advise the NRC of the source of payment from which such amounts were collected.

(f) *Fees.* Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost of such services. In addition, Treasury or a paying agency acting on behalf of Treasury, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. Treasury may deduct the fees from amounts collected by offset or may bill the NRC. Fees charged for offset shall be based on actual administrative offsets completed.

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(g) *Disposition of amounts collected.* The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under paragraph (f) of this section, to NRC. If an erroneous offset payment is made to the NRC, the disbursing official will notify the NRC that an erroneous offset payment has been made. The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the NRC. Alternatively, upon the disbursing official's request, the NRC shall return promptly to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to the agency have been paid). The disbursing official and the NRC shall adjust the debtor records appropriately.

[67 FR 57508, Sept. 11, 2002]

§ 16.15 Procedures for internal salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the NRC's notice of intention to offset as provided in § 16.7. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period may not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Offset against any subsequent payment due an employee who retires or resigns or whose employment or period of active duty ends before collection of the debt is completed is provided for in accordance with 31 U.S.C. 3716. These payments include but are not limited to final salary payment or

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lump-sum leave due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

§ 16.17 Refunds.

(a) The NRC will refund promptly any amounts deducted to satisfy debts owed to the NRC when the debt is waived, found not owed to the NRC, or when directed by an administrative or Judicial order.

(b) The creditor agency will promptly return any amounts deducted by NRC to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required or permitted by law or contract, refunds under this section may not bear interest.

§ 16.19 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the NRC official or officials who were charged with the responsibility for discovery and collection of the debts.

§ 16.21 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutes or contract(s) to the contrary.

§ 16.23 Interest, penalties, and administrative charges.

Charges may be assessed for interest, penalties, and administrative charges in accordance with the FCCS, 31 CFR Chapter IX, 901.9.

[67 FR 57509, Sept. 11, 2002]